IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.52 OF 1999
WITH
CIVIL APPLICATION NO.1568 OF 2006

Mrs. Lakhwinder Kaur Gurai ..Petitioner.
Vs.
The Garison Children Education Society
& Ors. ..Respondents.

...

Mr. Y.R. Mehta for the Petitioner.
Mr. Uday Warunjikar for Respondent No.2.
Mr. Manoj Kadam h/f Mr. V.M. Thorat for Respondent No.3.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

23rd June, 2006.

ORAL ORDER :

1. The dispute in the present case relates to the interse seniority between the Petitioner and the Third Respondent who are both teachers employed by the Garison Childrens Education Society in the secondary school conducted by the society at Khadki. With the consent of all counsel, the Writ Petition is taken up for final hearing.

2. The Petitioner joined the services of the institution on 4th

August, 1988. The Petitioner completed her B. Sc. in 1987 and her B. Ed. in 1988. (The Petitioner has also completed her M.A. in 1992, but which is not material for the present purposes).

3. The Third Respondent joined the school earlier than the Petitioner viz. on 22nd August, 1984. At the time of joining, the Third Respondent only had the B. Sc. Degree qualification. The Third Respondent completed the B. Ed. in 1989. Therefore, the admitted facts as they stand would demonstrate that the Third Respondent acquired a B. Ed. Degree after the Petitioner.

4. Rule 12 of the Maharashtra Employees of Private Schools Rules 1981 requires every management to prepare a seniority list of teaching and of non-teaching staff in accordance with the guidelines laid down in Schedule F. Disputes in the matter of interse seniority have to be referred to the Education Officer for his decision. In the present case, the Education Officer (Secondary) of the Zilla Parishad enquired into the complaint filed by the Petitioner on 27th October, 1997 in regard to the Third Respondent having been given a higher position in the seniority list. The Education Officer held that though the Petitioner had

acquired her B. Ed. Degree qualification in 1988, that is to say prior to the Third Respondent, she was not entitled to rank higher in seniority on the ground that between 4th August, 1988 and 30th September, 1991 the Petitioner had been granted the D. Ed pay scale. It is only on this ground that the Education Officer has ruled that the services rendered by the Petitioner during the period 4th August, 1988 and 30th September, 1991 would not fall for classification in Category C of Schedule F to the Rules. It is the correctness of this decision that falls for determination in the present proceedings.

5. Schedule F inter alia lays down guidelines for the fixation of seniority of teachers in secondary schools and junior colleges of education. Category C is as follows :

> "Category C : Holders of -
>
> M.A. /M.Sc./M.Com., B.T./ B.Ed., on its equivalent; or B.A.B.T./ B.Sc./B.Com., B.T./B.Ed., or its equivalent; or B.A./B.Sc./B.Com. Dip.T. (old two years course); or B.A./B.Sc./B.Com., S.T.C./Dip. Ed./Dip.T. (one year course) with 10 years post S.T.C. etc. service.
>
> [B.A. or its equivalent plus Senior Hindi Shikshak Sanad with five years service: or Junior Hindi Shikshak with ten years service [after obtaining both academic and training

qualifications.]"

6. The B.A/ B. Sc./ B. Com. Degree qualification together with the B. Ed. qualification falls in Category C. Note 4 lays down that the categories which are mentioned in Schedule F represent a ladder of seniority and have been mentioned in descending order. In so far as the Petitioner is concerned, on the date of her initial appointment, i.e. 4th August, 1988, she had both the B. Sc. and B. Ed. qualification. Consequently, immediately upon her appointment, the Petitioner belonged to Category C. In so far as the Third Respondent is concerned he was not on the date of his initial appointment qualified to fall in Category C in the absence of a B. Ed. qualification. The Education Officer has proceeded on the basis that the Petitioner was functioning in the B. Ed. pay scale (Category C) from 1st October, 1991 whereas, the Third Respondent was functioning in the B. Ed. pay scale (Category C) from June 1989. Plainly, the Education Officer confused between the entitlement of a teacher to be placed in Category C with the grant of the B. Ed. pay scale. The entitlement of a teacher to be placed in one of the categories included in Category C is dependant on whether the teacher fulfills the qualifications and

experience stipulated in a particular sub-category included therein. The grant of a higher pay scale is not a relevant consideration. That has indeed been the position of law settled authoritatively in the decision of a Division Bench of this Court in **Saramma Varghese v. Secretary/ President, S. I.C. E. S. Society**[1]**.** The Division Bench specifically held that teachers in Category C even if they hold a graduate or post graduate degree but do not hold a B. Ed./ B. T. qualification would rank as untrained teachers and their seniority would be fixed in a lower rung of the ladder. It has been held that a higher pay scale is not relevant for the purposes of fixation of seniority of teachers. A teacher with a B. A. and B. Ed. wherever he teaches will take his place according to the date of appointment and continuous officiation. (see para 16 at page 954). In view of the judgment of the Division Bench and the plain language contained in Schedule F, it is evident that the Petitioner is entitled to be placed in Category C from the initial date of appointment since from the date of appointment she held the qualification required for placement in that category. Contrary wise the Third Respondent obtained the B. Ed. qualification in 1989 and it is only thereafter that he would rank in Category C. The

1 1989 Mh. L. J. 951.

Education Officer's determination is clearly in the teeth of the statutory rules.

7. On behalf of the Third Respondent it has been submitted that the Petitioner is entitled to espouse her grievance before the School Tribunal and this Petition be rejected. In so far as this aspect of the matter is concerned, I am of the view that it is not necessary to relegate the Petitioner to the remedy of the School Tribunal for more than one reason. Section 9(1)(b) of the Maharashtra Employees' of Private Schools (Conditions of Service) Regulation Act, 1977 enunciates that notwithstanding anything contained in any law or contract for the time being in force, any employee in a private school, who is superseded by the management while making an appointment to any post by promotion and who is aggrieved, shall have a right to complain to the Tribunal. The jurisdiction of the Tribunal is therefore invocable upon a supersession by the management while making an appointment to a post by promotion. A Division Bench of this Court considered the question in **Umesh Balkrishna Vispute v. State of Maharashtra**[2]. Earlier, a Learned Single Judge of this Court had

2 2000(4) Mh. L. J. 564

held in **Burondi Karajgaon Lodghar Panchkroshi Shikshan Sanstha v. Vilasrao Maruti Desai**[3] that it was not open to the School Tribunal to go to the question of interse seniority between teachers since the power to do so has been conferred upon the Education Officer under Rule 12 of the Rules. The Division Bench held in **Umesh Balkrishna** that the issue was not res integra and is inter alia covered by an unreported judgment of the Nagpur Bench in **Sou Saroj Yashwant Deopujari v. Education Officer** (Writ Petition 546 of 1989 decided on 31st March, 1989). The Nagpur Bench had held that in as much as Section 9(1)(b) authorizes the Tribunal to consider the grievance of an employee who is superseded by the management while making an appointment to a post by promotion, the question of seniority would have to be decided by the Tribunal before reaching a finding as to whether a supersession was justified or otherwise. Therefore a question of seniority would arise as an incidental question while deciding the legality of the act of supersession. In **Umesh Balkrishna** (supra) the Division Bench therefore held that the finalization of the seniority list under Rule 12 is not final and conclusive and is not binding on the Tribunal, particularly having regard to the *non*

3 1999(2) Mh. L. J. 779

obstante provision in Section 9(1) and "the dispute relating to seniority list can also be considered by the Tribunal as an incidental question while deciding the controversy in regard to supersession." In other words, when an employee who has been superseded on the basis of a seniority list challenges the decision of supersession, it is open to the Tribunal as an incidental question to determine as to whether the seniority list on the basis of which the supersession has taken place was valid or otherwise. The same view was reiterated by a learned Single Judge of this Court in **Pratibha d/o Sahebrao Patil v. Presiding Officer, School Tribunal, Amravati**[4]. In the present case, there has been no supersession at all since both the Petitioner and the Third Respondent continue as Assistant Teachers. Therefore as a matter of first principle, it would be futile to suggest that the Petitioner must await an act of supersession and then move the School Tribunal for challenging or impugning the seniority list. That apart, the Petition has been admitted in the year 1999 and there is no reason why this Court should relegate the Petitioner to a remedy which in any event as noted above would not be available in the absence of supersession.

4 2006(1) Mh. L. J. 697

8. It was next urged on behalf of the Third Respondent that in a Government Resolution dated 25th June, 1992 it has been provided that even if a teacher holds the qualification which has been prescribed in Category C of Schedule F, those teachers who are working as untrained graduate teachers would not be entitled to be included in Category C. In my view, the field is covered by the Rules made in pursuance of the power conferred by the legislature under the Act. The Rules have a statutory force and character. The Government Resolution cannot supplant the provisions of the rules. It can only be read in an area where the rules are silent. In the present case, in so far as the rules are concerned, Schedule F makes the provision expressly clear and Category C defines those holders of stipulated qualifications who are entitled to inclusion therein. In the circumstances, the entitlement of the Petitioner which flows out of the statutory rules cannot be defeated relying on a Government Resolution. Finally, it has been urged on behalf of the Third Respondent that there has been a delay on the part of the Petitioner. There is no merit in the submission. The Petitioner has taken recourse to the remedy of objecting to the seniority list before the Education Officer. Both the

Petitioner and the Third Respondent continue to act as Assistant Teachers. In a matter where there has been a clear breach of statutory rules, resulting in a miscarriage of justice, it is difficult to hold that the Petition has been delayed. Having regard to the facts and circumstances of the case, there is no delay, much less delay of a nature that would disentitle the Petitioner from seeking recourse to her due entitlements.

9. In the circumstances, the Petition has to be allowed and is accordingly allowed. The impugned orders of the Education Officer dated 26th December, 1997 and 6th December, 1998 are quashed and set aside in terms or prayer clause b(i). The Petitioner is entitled to a declaration in terms of prayer clause (b-ii) that she ranked senior to the Third Respondent. Rule made absolute in terms of prayer clauses (b-i) and (b-ii). There shall be no order as to costs.

10. In view of the disposal of the main Petition, the Civil Application becomes infructuous and is accordingly disposed of.